

APPEAL NO. 151923
FILED NOVEMBER 24, 2015

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 20, 2014, in Denton, Texas, with (hearing officer 1) presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the compensable injury of (date of injury), extends to right carpal tunnel syndrome/median nerve injury; right cubital tunnel syndrome; right wrist TFCC tear and scapholunate ligament tears; tenosynovitis; right wrist, elbow, and shoulder tendinitis; and cervical and right shoulder strain/sprain. Records of the Texas Department of Insurance, Division of Workers' Compensation (Division) show that decision was appealed by respondent 2 (carrier), but a written decision was not issued by the Appeals Panel and the hearing officer's decision and order became final on February 23, 2015. See Section 410.169.

In a Division Order for Attorney's Fees Sequence 11 dated August 4, 2015, (Order 1), (hearing officer 2), a hearing officer with the Division, approved 20.75 hours of attorney's fees out of 26.25 requested hours at \$150.00 an hour, and 5.75 hours of legal assistant fees out of 7.25 requested hours at \$50.00 an hour for a total attorney fee award of \$3,400.00, out of \$4,300.00 requested.

Subsequently, in a Division Order for Attorney's Fees Sequence 12 dated September 1, 2015, (Order 2), hearing officer 1 approved 11 hours of attorney's fees out of 11 hours requested at \$150.00 an hour, and .50 hours of legal assistant fees out of .50 requested hours at \$50.00 an hour for a total attorney fee award of \$1,675.00.

The appellant (claimant) appealed a portion of the attorney's fees approved in Order 2 by hearing officer 1 on September 1, 2015, contending that some of those fees were already approved in Order 1 by hearing officer 2 on August 4, 2015.

DECISION

Affirmed in part and reversed and rendered in part.

The standard for review in an attorney's fees case is abuse of discretion. Appeals Panel Decision (APD) 061189, decided July 24, 2006.

Respondent 1 (attorney) requested the following relevant fees in Order 1, dated August 4, 2015:

1.00 hour for attending Benefit Review Conference (BRC) on September 29, 2014;

1.25 hours on September 29, 2014, to prepare for the November 20, 2014, CCH;

3.50 hours on November 6, 2014, to prepare for the November 20, 2014, CCH;

.75 hours on November 19, 2014, to prepare for the November 20, 2014, CCH; and

4.25 hours for attending the November 20, 2014, CCH.

Division records show that hearing officer 2 reduced the above requested fees for attendance of the September 29, 2014, BRC and November 20, 2014, CCH based on the actual length of the BRC and CCH as documented in Division records. Division records reflect that the September 29, 2014, BRC lasted 30 minutes, not 1 hour, and the November 20, 2014, CCH lasted 2 hours, not 4.25 hours. Division records also show hearing officer 2 reduced the other requested fees because the attorney did not provide written justification to exceed other guidelines. Hearing officer 2 approved the requested fees in the following manner:

.5 hours for attending the September 29, 2014, BRC (out of 1.00 hours requested);

1.25 hours on September 29, 2014, for preparing for the November 20, 2014, CCH (out of 1.25 hours requested);

2.75 hours on November 6, 2014, for preparing for the November 20, 2014, CCH (out of 3.50 hours requested);

.00 hours on November 19, 2014, for preparing for the November 20, 2014, CCH (out of .75 hours requested); and

2.00 hours for attending the November 20, 2014, CCH (out of 4.25 hours requested).

We note that hearing officer 2 approved a total of 6 hours ($1.25 + 2.75 + .00 + 2.00$) out of a requested 9.75 hours ($1.25 + 3.50 + .75 + 4.25$) for fees related to the November 20, 2014, CCH, which is the maximum amount allowed under the guidelines provided in 28 TEX. ADMIN CODE § 152.4 (Rule 152.4) (actual time in CCH, 2 hours in this case, plus 4 hours). See Rule 152.4.

Subsequent to receiving Order 1, the attorney again requested the same relevant fees which were reduced or denied in Order 1:

1.00 hour for attending a September 29, 2014, BRC;

3.50 hours on November 6, 2014, to prepare for the November 20, 2014, CCH;

.75 hours on November 19, 2014, to prepare for the November 20, 2014, CCH; and

4.25 hours for attending the November 20, 2014, CCH.

The attorney attached a detailed justification text regarding the requested fees, and on September 1, 2015, hearing officer 1 approved all of the above fees requested by the attorney in Order 2, for a total of 9.50 hours (1.00 + 3.50 + .75 + 4.25).

The claimant contends that Order 2 awards fees that were already awarded in Order 1. The claimant is correct. Order 2 approved the following duplicate services:

Order 1	Order 2
.5 hours approved for attending the 30 minute September 29, 2014, BRC	1.00 hour approved for attending the 30 minute September 29, 2014, BRC
2.75 hours on November 6, 2014, approved for preparing for the November 20, 2014, CCH	3.50 hours on November 6, 2014, approved for preparing for the November 20, 2014, CCH
2.00 hours approved for attending the 2 hour November 20, 2014, CCH	4.25 hours approved for attending the 2 hour November 20, 2014, CCH

A total of 9.50 hours of the 11 total hours awarded in Order 2 was either already awarded or properly reduced or denied in Order 1: 1.00 hour for attending the 30 minute September 29, 2014, BRC, and 8.50 hours (3.50 + 4.25 as noted above + .75

hours on November 19, 2014, denied in Order 1) for preparation for and attendance of the 2 hour November 20, 2014, CCH. As noted above, Order 1 awarded a total of 6 hours for fees related to the November 20, 2014, CCH, which is the maximum amount allowed under Rule 152.4 (2 hours for the actual time of the CCH plus 4 hours). The attorney provided the following written justification for exceeding the guidelines regarding the CCH:

[November 6, 2014] Additional time was spent with claimant due to a much complicated mechanism of injury and causation issues involved

[November 19, 2014] Updated CCH direct

[November 20, 2014] Met with claimant after CCH to discuss next step

Division records do not establish that the extent-of-injury issue at the November 20, 2014, CCH was so complicated to warrant justification to exceed the guidelines provided in Rule 152.4. Accordingly, we hold that the attorney's written justification is not sufficient to exceed the guidelines provided in Rule 152.4.

Because 9.50 hours of the 11 total hours awarded in Order 2 were either already awarded in Order 1 or properly reduced or denied in Order 1, we reverse that portion of Order 2 awarding 9.50 hours in attorney's fees at \$150.00 an hour for a total reduction of \$1,425.00. We affirm that portion of Order 2 awarding an attorney fee award for 1.5 hours of attorney's fees at \$150.00 an hour and .50 hours of legal assistant fees at \$50.00 an hour for a total attorney fee award of \$250.00.

SUMMARY

We affirm that portion of Order 2 awarding an attorney fee award for 1.5 hours of attorney's fees at \$150.00 an hour and .50 hours of legal assistant fees at \$50.00 an hour for a total attorney fee award of \$250.00.

We reverse that portion of Order 2 awarding 9.50 hours in attorney's fees at \$150.00 an hour for a total reduction of \$1,425.00.

The true corporate name of the insurance carrier is **AMERICAN ZURICH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge